

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

DUFFY & SWEENEY, LTD. and MICHAEL F. SWEENEY,)	
)	
)	
Plaintiffs,)	Case No.:
)	
v.)	
)	
OLD REPUBLIC INSURANCE COMPANY,)	
)	
Defendant.)	

**DEFENDANT OLD REPUBLIC INSURANCE COMPANY'S
NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b)**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, defendant Old Republic Insurance Company ("Old Republic") hereby removes the above styled action from the Providence/Bristol County Superior Court for the State of Rhode Island (Providence/Bristol County Superior Court Case No. PC-2018-6011) to the United States District Court for the District of Rhode Island on the basis of diversity jurisdiction. Old Republic states that removal is proper for the following reasons:

I. FACTUAL BACKGROUND

On July 30, 2018, Old Republic filed a Complaint for Declaratory Judgment in this District (Case 1:18-cv-00419) (the "Declaratory Judgment Action") seeking a declaration that it does not owe a duty to defend or indemnify Duffy & Sweeney, Ltd. (the "Firm") or Michael F. Sweeney ("Sweeney") under a Lawyers Professional Liability Insurance Policy issued to the Firm with respect to a lawsuit captioned *Richard L. Gemma, as Receiver for BR Asset Management, LLC f/k/a Benrus, LLC v. Michael F. Sweeney, et al.*, Case No. PC-2018-3635, pending in the Providence/Bristol County Superior Court for the State of Rhode Island as well as

another matter¹ tendered under the Policy (the “Underlying Matters”). The Firm and Sweeney have appeared in the Declaratory Judgment Action, which is pending before Judge William E. Smith.

On August 21, 2018, Duffy & Sweeney, Ltd. (the “Firm”) and Michael F. Sweeney (“Sweeney”) filed this action against Old Republic in the Providence/Bristol County Superior Court for the State of Rhode Island, captioned *Duffy & Sweeney, Ltd. and Michael F. Sweeney v. Old Republic Insurance Company*, Case No. PC-2018-6011 (the “State Court Action”). The State Court Action asserts causes of action relating to Old Republic’s denial of coverage for the Underlying Matters. On August 22, 2018, counsel for the Firm and Sweeney sent by email a copy of the Summons and Complaint to Old Republic’s counsel in the Declaratory Judgment Action and requested that Old Republic waive service of the State Court Action. A copy of the Summons and Complaint are attached as **Exhibit A**². All documents, including process, pleadings and orders served upon Old Republic are contained in Exhibit A. *See* 28 U.S.C § 1446(a). The Firm and Sweeney have filed the Complaint in the Providence/Bristol County Superior Court for the State of Rhode Island and no further proceedings have taken place in this action.

The State Court Action, like the Declaratory Judgment Action, concerns the same insurance coverage dispute between the Firm and Sweeney and their insurer, Old Republic³. The Complaint in the State Court Action alleges that Old Republic issued a Lawyers Professional

¹ References to the caption and specific allegations contained in the second matter tendered under the policy are the subject of a stipulated protective order in the Declaratory Judgment Action - Case 1:18-cv-00419 – Document number 19.

² The State Court Action Complaint attached hereto as Exhibit A contains redactions. The redactions contained within the State Court Action Complaint, upon information and belief, were made by the plaintiffs or their respective counsel at the time that the State Court Action Complaint was filed with the Providence/Bristol County Superior Court for the State of Rhode Island.

³ Upon removal of this action to the United States District Court for the District of Rhode Island, counsel for Old Republic intend to file a motion to consolidate this removed case with the Declaratory Judgment Action - Case 1:18-cv-00419 currently pending before the Court for purposes of judicial economy.

Liability Insurance Policy, number ORPRO 39405, to the Firm for the period April 19, 2017 to April 19, 2018 (the “Policy”). (Ex. A, Compl. ¶ 7). The Complaint asserts that Old Republic owes a duty to defend and indemnify the Firm and Sweeney under the Policy with respect to the Underlying Matters, including the Richard L. Gemma lawsuit which seeks to recover damages of \$2,608,582.50, plus interest, costs and attorneys’ fees. (Ex. A, Compl. ¶ 30). The Complaint alleges that Old Republic denied coverage for the Underlying Matters under the Policy. (Ex. A, Compl. ¶¶ 34-36).

The Complaint asserts three causes of action against Old Republic. Count I asserts a cause of action for breach of contract, alleging that Old Republic’s denial of coverage for the Underlying Matters constitutes a breach of the Policy and that “the Plaintiffs have been directly and financially damaged.” Count II seeks a declaration that the Firm and Sweeney are entitled to coverage under the Policy for the Underlying Matters. Count III asserts a cause of action under R.I. Gen. Laws § 9-1-33 and contends that “[t]he Plaintiffs have been directly and financially damaged” by Old Republic’s denial of coverage for the Underlying Matters. (Ex A, Compl.).

II. REMOVAL JURISDICTION

This litigation is a civil action over which this Court has original diversity jurisdiction pursuant to 28 U.S.C. §1332 and is one that may be removed to this Court by Old Republic pursuant to 28 U.S.C. §1441(a) and (b) because the action is between citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

III. CITIZENSHIP

The Firm is a Rhode Island professional service corporation with its principal place of business in Bristol County, Rhode Island. Sweeney is a resident of Rhode Island. Old Republic is

a Pennsylvania corporation with its principal place of business in Illinois. Therefore, there is complete diversity between the plaintiffs and defendant in this action.

IV. AMOUNT IN CONTROVERSY

The amount in controversy in this case exceeds \$75,000, exclusive of interest and costs. In this litigation, the Firm and Sweeney seek, among other things, payment of their defense expenses incurred in the Underlying Matters, a defense to the Underlying Matters going forward and indemnification in the event of a judgment or settlement in the Underlying Matters, including the Richard L. Gemma lawsuit. (Ex. A, Compl.). The Policy's limit of insurance is \$5 million each Claim and in the aggregate. (Ex. A, Compl.).

V. TIMELINESS OF REMOVAL

This Notice of Removal has been filed within thirty (30) days of the date Old Republic received the Summons and Complaint and the plaintiffs' request to waive service on August 22, 2018. Accordingly, this Notice of Removal is timely filed within thirty (30) days as required by 28 U.S.C. § 1446(b). As a result, removal is timely in accordance with 28 U.S.C. § 1446(b).

VI. VENUE

The United States District Court for the District of Rhode Island is a proper venue under 28 U.S.C. §§ 1441(a) and 1446(a) because it is the federal judicial district embracing the Providence/Bristol County Superior Court for the State of Rhode Island where the State Court Action was originally filed.

VII. NOTICE

Pursuant to 28 U.S.C. § 1446(d), a copy of the Notice of Removal is being served on counsel for the Firm and Sweeney and a copy will be filed promptly with the clerk of the Providence/Bristol County Superior Court for the State of Rhode Island.

Pursuant to 28 U.S.C. § 1446(a), attached are true and correct copies of all documents served upon Old Republic in the State Court Action: the Summons and Complaint. As of September 12, 2018, no other documents have been filed or served upon Old Republic.

WHEREFORE, Old Republic Insurance Company respectfully removes this action from the Providence/Bristol County Superior Court for the State of Rhode Island to this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. By this Notice of Removal, Old Republic does not waive any objection it may have as to service, jurisdiction or any other defenses it may have to this action and Old Republic intends no admission of fact, law or liability by this Notice, and expressly reserves all defenses, motions and/or pleas.

OLD REPUBLIC INSURANCE COMPANY,

/s/ David W. Zizik

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified and paper copies will be sent to those indicated as non-registered participants on September 12, 2018.

/s/ David W. Zizik